

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KRISTA MITCHELL,

Plaintiff,

v.

VERONIQUE N. BIKOBA, et al.,

Defendants.

No. 2:24-cv-02294-TLN-CSK

ORDER

THOMAS F. RUTAGANIRA,

Defendant/Cross-
Complainant,

v.

KRISTA MITCHELL,

Plaintiff/ Cross-
Defendant.

This matter is before the Court on Defendant Thomas Rutaganira's ("Defendant") Motion to Remand. (ECF No. 3.) Plaintiff Krista Mitchell ("Plaintiff") filed an opposition. (ECF No. 4.) Defendant did not file a reply. For the reasons set forth below, the Court GRANTS Defendant's Motion to Remand.

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1 On February 1, 2021, Plaintiff filed a complaint in state court alleging unlawful menacing
2 influence in violation of California Civil Code § 1940.2(a)(3). (ECF No. 1 at 22–98.) On March
3 23, 2021, Defendant filed a cross-complaint against Plaintiff alleging claims for: breach of
4 contract; breach of the implied covenant of good faith and fair dealing; and negligence. (*Id.* at
5 247–253.) On April 22, 2021, Plaintiff dismissed her complaint in its entirety. (ECF No. 4 at 2.)
6 On August 21, 2024, the state court issued a tentative ruling striking Plaintiff’s answer to
7 Defendant’s cross complaint and issuing terminating sanctions against Plaintiff and her counsel.
8 (ECF No. 1 at 2.) On August 22, 2024, Plaintiff removed the action to this Court under 28 U.S.C.
9 § 1446(b)(3), contending the tentative ruling discriminated against Plaintiff because of her mental
10 and physical disabilities in violation of the Americans with Disabilities Act of 1990. (*Id.*) On
11 September 20, 2024, Defendant filed the instant motion to remand on the grounds that: (1)
12 Plaintiff does not qualify as a “defendant” under 28 U.S.C. § 1446(a) and is not authorized to
13 seek removal; (2) neither the complaint nor the cross-complaint raises substantial federal question
14 that is necessary to resolve either parties’ claim; and (2) a court order’s alleged violation of
15 federal law is insufficient to confer federal question jurisdiction. (ECF No. 3 at 3–5.)

16 The Court agrees with Defendant. The right to remove a case from state to federal court is
17 vested exclusively with the defendant or defendants. *See* 28 U.S.C. § 1441(a) (“Except as
18 otherwise expressly provided by Act of Congress, any civil action brought in a State court of
19 which the district courts of the United States have original jurisdiction, may be removed by the
20 defendant or the defendants, to the district court of the United States for the district and division
21 embracing the place where such action is pending.”) (emphasis added). Put simply, a plaintiff
22 “cannot remove an action to federal court.” *Progressive W. Ins. Co. v. Preciado*, 479 F.3d 1014,
23 1017 (9th Cir. 2007). This general principle applies equally to plaintiffs who become cross-
24 defendants. *See Westwood Apex v. Contreras*, 644 F.3d 799, 805 (9th Cir. 2011) (holding that the
25 “counterclaim defendant who is also a plaintiff to the original state action may not remove the
26 case to federal court”). Plaintiff initiated this action in state court and, before Plaintiff dismissed
27 her complaint, Defendant filed a cross-complaint, thereby making Plaintiff a cross-defendant.
28 Accordingly, Plaintiff was not entitled to remove this action.

1 Moreover, courts “strictly construe the removal statute against removal jurisdiction.”
2 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (per curiam). “If the district court at any
3 time determines that it lacks subject matter jurisdiction over the removed action, it must remedy
4 the improvident grant of removal by remanding the action to state court.” *Cal. ex rel. Lockyer v.*
5 *Dynegy, Inc.*, 375 F.3d 831, 838, *as amended*, 387 F.3d 966 (9th Cir. 2004), *cert. denied* 544 U.S.
6 974 (2005).

7 Federal question jurisdiction is set forth in 28 U.S.C. § 1331. *See* 28 U.S.C. § 1331. The
8 “presence or absence of federal question jurisdiction is governed by the ‘well-pleaded complaint
9 rule,’ which provides that federal jurisdiction exists only when a federal question is presented on
10 the face of the plaintiff’s properly pleaded complaint.” *Caterpillar, Inc. v. Williams*, 482 U.S.
11 386, 386 (1987). Federal question jurisdiction therefore cannot be based on a defense,
12 counterclaim, cross-claim, or third-party claim raising a federal question. *See Vaden v. Discover*
13 *Bank*, 556 U.S. 49 (2009); *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042–43 (9th Cir. 2009).

14 Here, Plaintiff’s complaint contains one claim, unlawful menacing influence pursuant to
15 California Civil Code § 1940.2(a)(3) (ECF No. 1 at 22–98) and Defendant’s cross complaint
16 contains three claims: breach of contract; breach of the implied covenant of good faith and fair
17 dealing; and negligence. (*Id.* at 247–253.) The parties’ claims arise exclusively from state law,
18 which Plaintiff does not dispute. Instead, Plaintiff argues the state court’s August 21, 2024
19 tentative ruling violates federal law. However, Plaintiff cites no statute or case law supporting
20 her theory that a plaintiff may seek removal when a court order violates federal law and has failed
21 to uphold her burden of establishing that removal is proper. *See Gaus*, 980 F.2d at 566.

22 Lastly, Defendant argues he is entitled to attorney fees. (ECF No. 3 at 5.) “An order
23 remanding the case may require payment of just costs and any actual expenses, including attorney
24 fees, incurred as a result of removal.” 28 U.S.C § 1447(c). “Absent unusual circumstances,
25 courts may award attorney’s fees under § 1447(c) only where the removing party lacked an
26 objectively reasonable basis for seeking removal.” *Martin v. Franklin Capital Corp.*, 546 U.S.
27 132, 141 (2005).

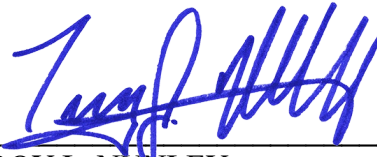
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1 Here, Plaintiff “lacked an objectively reasonable basis for seeking removal.” *Id.* Plaintiff
2 is not a proper party to seek removal, and her complaint did not contain a federal question.
3 Moreover, Plaintiff’s motion appears to have been filed in direct response to an adverse ruling
4 granting Defendant terminating sanctions and entering default judgment against Plaintiff. As
5 such, the Court GRANTS Defendant’s request for attorney’s fees under 28 U.S.C. § 1447(c) in
6 the amount of \$1,785.00.

7 For these reasons, the Court GRANTS Defendant’s request for attorney’s fees under 28
8 U.S.C. § 1447(c) in the amount of \$1,785.00. The Court also GRANTS Defendant’s Motion to
9 Remand (ECF No. 3) and REMANDS this action to Yolo County Superior Court. The Clerk of
10 the Court is directed to close the case.

11 IT IS SO ORDERED.

12 Date: May 28, 2025

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TROY L. NUNLEY
CHIEF UNITED STATES DISTRICT JUDGE